

fully considered in the decision-making process. During this rebuttal period and before timely submitting the rebuttal arguments to Customs, the importer and the copyright owner shall first provide each other with a copy of all such material. The submission of this rebuttal material to Customs shall be accompanied by a written statement confirming that a copy has been provided to the opposing party. The port director shall not accept any additional material from the parties to substantiate the claim or denial of infringement after the final 30-day rebuttal period expires.

(ii) *Decision.* Upon receipt of rebuttal arguments, or 30 days after notification if no rebuttal arguments are submitted, the port director shall forward the entire file, together with a sample of each style that is considered possibly infringing, to CBP Headquarters, (Attention: Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade), for decision on the disputed claim of infringement. The final decision on the disputed claim of infringement shall be forwarded to the port director who shall send a copy thereof to the copyright owner as well as to the importer.

(2) *Infringement disclaimed or unsupported.* If the copyright owner disclaims that the specified imported article is an infringing copy of his recorded copyrighted work, or fails to present sufficient evidence or proof to substantiate a claim of infringement, the port director shall release the detained shipment to the importer and all further importations of the same article, by whomsoever imported, without further notice to the copyright owner.

(3) *Failure to file demand or bond.* If the copyright owner fails to file a written demand for exclusion and bond as required by paragraph (b) of this section, the port director shall release the detained articles to the importer and notify the copyright owner of the release.

(4) *Withdrawal of bond.* Where the copyright owner has posted a bond on the grounds that the imported article is infringing, the copyright owner may not withdraw the bond until a decision on the issue of infringement has been reached.

(e) *Alternative procedure: court action.* As an alternative to the administrative procedure described in this section, the copyright owner, whether or not he has recorded his copyright with Customs, may seek a court order enjoining importation of the article. To obtain Customs enforcement of an injunction, the copyright owner shall submit a certified copy of the court order to the Commissioner of Customs, Attention: Office of the Chief Counsel, Washington, DC 20229. In addition, if the copyright in question is not recorded with Customs, the copyright owner shall submit the \$190 fee required by § 133.33(b) and, if the work is a three-dimensional or other work not readily identifiable by title and author, 5 photographic or other likenesses reproduced on paper approximately 8" × 10½" in size.

[T.D. 87-40, 52 FR 9475, Mar. 25, 1987, as amended by T.D. 93-87, 58 FR 57740, Oct. 27, 1993; T.D. 98-21, 63 FR 12000, Mar. 12, 1998; 63 FR 15088, Mar. 30, 1998]

§ 133.44 Decision of disputed claim of infringement.

(a) *Claim of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is an infringing copy, the port director shall seize the imported article and institute forfeiture proceedings in accordance with part 162 of this chapter. The bond of the copyright owner shall be returned.

(b) *Denial of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is not an infringing copy, the port director shall release all detained merchandise and transmit the copyright owner's bond to the importer.

[T.D. 87-40, 52 FR 9476, Mar. 25, 1987, as amended by T.D. 97-30, 62 FR 19493, Apr. 22, 1997]

§ 133.45 [Reserved]

§ 133.46 Demand for redelivery of released articles.

If it is determined that articles which have been released from Customs